

REMARKS

Applicant has amended claims 1, 2, 5-7 and 19-22. Claims 9-18 have been canceled. New claims 23-26 have been added. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §102(b) and 112 rejections as set forth in the Office Action dated January 3, 2005. It is believed none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to claims 1, 2, 7, 12, 14 and 16 for inclusion of blank lines. The Examiner is correct in his assumption that the blanks will be replaced with the deposit accession number upon allowance of any claims of the present invention.

Claims 1-22 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. As stated in the specification on page 32, the seed deposit is being maintained by Stine Seed Farm, Inc. The deposit will be available to the Commissioner during the pendency of this application and, upon allowance of any claims, a deposit of the soybean seed will be made with the American Type Culture Collection.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit will be performed; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 7, 9-11, 13-17 and 20-22 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has amended claims 7 and 20-22 and canceled claims 9-11 and 13-17. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 7, 9-11, 13-17, and 20-22 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has canceled claims 9-11 and 13-17 and amended claims 7 and 20-22. Withdrawal of this rejection is respectfully requested.

Claims 7, 18-19, and 21 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner has rejected claim 7 as indefinite because "is capable of expressing" does not clearly recite whether or not the characteristics are actually expressed. Applicant has amended claim 7 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 18 and 21 as being indefinite because "transgene is selected from the group consisting of: herbicide resistance, insect resistance, and disease resistance" is confusing. Applicant has canceled claim 18 and amended claim 21 as suggested by the Examiner. Withdrawal of this rejection is respectfully requested.

The Examiner has additionally rejected claim 18 as being indefinite in its recitation of "the soybean plant, or parts thereof, of claim 2, wherein the plant or parts thereof [has] been transformed." Applicant has canceled claim 18. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 15 and 17 under 35 U.S.C. §102(b) as being anticipated by Boerma et al. (Crop Sci. 41:920-921, 2001). Applicant has canceled claims 15 and 17. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §112 and §102. Reconsideration of this application and early notice of allowance is requested.

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED					
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